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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

(Syllabi prepared by M. P. Burks, State Reporter.)

RUSSELL V. LOUISVILLE & NASHVILLE RAILROAD COMPANY.—Decided at Wytheville, July 2, 1896.—*Cardwell*, J. Absent, *Harrison*, J:

1. RAILROADS—*Cattle-guards*—*Sec. 1262 of Code*. In an action against a railroad company to recover the penalty imposed by sec. 1262 of the Code for failure to construct cattle-guards, the gist of the action is whether or not the points within the plaintiff's enclosed lands at which he requested the defendant to construct the cattle-guards were necessary and proper places for them to be constructed within the meaning of the statute, and not whether that section applies to private crossings.

2. PLEADING—*Demurrer*—*Withdrawal of pleas in order to pass on demurrer*. After a demurrer has been overruled and the defendant has pleaded, if the court is satisfied that the demurrer should have been sustained, it should allow the defendant to withdraw his plea, set aside its former order on the demurrer, and enter an order sustaining the demurrer.

3. PLEADING—*Action for penalties—Debt*. Actions to recover specific penalties imposed by statute do not sound in damages, and where a statute imposes a penalty no part of which can accrue to the Commonwealth, but provides no particular mode by which the person aggrieved may recover the penalty, the common law action of debt is the proper form of action. An action on the case does not lie.

PERSINGER'S ADM'R V. CHAPMAN.—Decided at Wytheville, July 9, 1896.—*Cardwell*, J. Absent, *Harrison*, J:

1. EQUITABLE RELIEF—*Reformation—Mutual mistake*. Equity will not relieve against an alleged mutual mistake of fact when it is clear that there can be no true statement of the case established, and that any effort to reform the instrument alleged to have been executed in mutual mistake would in all probability, if not certainly, result in injustice to the estate of one of the parties.

2. EQUITABLE RELIEF—*Mutual mistake—Diligence*. Equity will not extend its aid to one who has been guilty of culpable negligence. It requires that the party who asks relief on the ground of mutual mistake shall have exercised at least the degree of diligence which may be fairly expected of a reasonable person under the circumstances.

SLOCUM V. COMPTON.—Decided at Wytheville, July 9, 1896.—*Buchanan*, J. Absent, *Harrison*, J:

1. EJECTMENT—*Verdict for part of land—Requisites of verdict*.—Where the verdict, in an action of ejectment, is for a part only of the land sued for, the boundaries of the part recovered should be designated. The verdict must be certain in itself, or must refer to some certain standard by which to ascertain the land so found, otherwise it will be too uncertain to warrant a judgment upon it.

2. **EJECTMENT**—*Title by "court-right" proceedings—Possession at that time.* A plaintiff in ejectment who does not rely upon a grant from the Commonwealth, but endeavors to show that he has acquired the Commonwealth's title to the land in controversy by acts done and proceedings had under Section 41, Chapter 108, of the Code of 1873, as amended by the Act of March 6, 1880 (Acts 1879-'80, Ch. 214, p. 205), must bring himself within the terms of the Act. The Act provides, amongst other things, for a continuous settlement for five years and the payment of taxes within that time by the person having settled the same, and the title of the Commonwealth is to be relinquished to the person in possession of the land claiming the same under such settlement after having taken certain "court-right" proceedings therein provided for. If it appears that those under whom the plaintiff claims were not in possession of the land when they instituted the "court-right" proceedings provided for by that section, then the proceedings were without authority of law, and conferred no rights upon the parties claiming under them, and the plaintiff cannot recover.

BIGGS, FOR &C., v. ELLISTON DEVELOPMENT CO. AND OTHERS.—

Decided at Wytheville, July 16, 1896.—*Keith, P.* Absent, *Harrison, J.*:

1. **CORPORATIONS**—*Contract with stockholder—Estoppel.* A corporation may contract with one of its stockholders as with a stranger. There is nothing in the mere relation of stockholder to a corporation which will estop the stockholder from asserting any claim against the corporation which he might under similar circumstances assert against an individual.

2. **VENDOR'S LIEN**—*Effect of dividing land into town lots, with streets and alleys.*—If real estate be conveyed to a purchaser by a deed in which the vendor reserves a lien for balance of the purchase money, the purchaser cannot bind the vendor by any contract prejudicial to his interest. Although a purchaser subdivides land into blocks and lots, with convenient streets, lanes and alleys, and sells off a part of the lots, the whole is still bound to the vendor for the balance of the purchase money, unless some act or declaration on the part of the vendor, tending to deceive or mislead, or some contract or act of acquiescence, recognition or affirmance on his part of the dedication to the prejudice of his rights can be shown in evidence. Purchasers of a part of the land have the right to insist that the land shall be offered in the inverse order of alienation, but if, when so offered, it fails to bring sufficient to discharge the vendor's lien, the court should direct it to be sold as a whole, if thereby a better price can be obtained.

DUDLEY AND OTHERS v. MINER'S EX'ORS AND OTHERS.—Decided at Wytheville, July 16, 1896.—*Riely, J.* Absent, *Harrison, J.*:

1. **INJUNCTIONS TO ACTIONS AT LAW**—*Confession of judgment—Terms of confession.* A defendant in an action at law who has a distinct equitable defense as well as a legal defense, or who denies the right of the plaintiff to recover in any forum, legal or equitable, but who invokes the aid of equity as the more appropriate tribunal, under all the circumstances, in which to conduct the litigation, should not be required, as the price of coming into equity to enjoin the proceedings at law, to confess judgment at law. In such case it is not safe to require him